IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1648 of 2003 (S/S)
(Old No. 6541 of 1996)

1. Rahman
   S/o Sri Raheem Bux
   R/o 168, Populers Camp,
   Rahman Manzil, Mallital,
   District Nainital.
2. Nayan Singh Mehta
   S/o Sri Sher Singh
   R/o Village Mahar Gaon,
   Post Vohala, District Almora.

……. Petitioners

Versus

1. State of Uttar Pradesh
   through Principal Secretary,
   Medical & Health,
   Sachivalaya, Lucknow.
2. Director
   Parivar Kalyan, U.P., Lucknow.
3. Director General
   Medical Health & Family Planning,
   U.P., Lucknow.
4. Secretary, Finance (Pay Commission)
   U.P. Government, Sachivalaya, Lucknow.

…… Respondents

Mr. Alok Mehra, Advocate holding brief of Mr. Manoj Tiwari, learned counsel for the petitioner.
Mrs. Bina Pande, learned Standing Counsel for State of U.P.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitutions of India, the petitioners have sought writ in the nature of certiorari quashing the impugned order dated 28th September 1995 (copy Annexure -8 to the writ petition) and Government Order dated 12th September 1995

(copy Annexure -13 to the writ petition) issued by respondent No. 1. Also, a mandamus has been sought to revise the pay scale of the petitioners w.e.f. 01.01.1986 (in the pay scale of Rs. 950 – 1500).

2) Heard learned counsel for the parties and perused the record.

3) Brief facts of the case, as narrated in the writ petition, are that the petitioners initially started their carrier as Ward Boy and, thereafter, in between 1987 and 1990, they were promoted as Operation Theatre Attendants in the pay scale of Rs. 330 – 495 (unrevised). When the Pay Commission submitted its report, in the year 1989, the pay scale of Ward Boy was revised to Rs. 750 – 950, w.e.f. 01.01.1986. However, no specific revised pay scale was given to the Operation Theatre Attendants (for brevity hereinafter referred as O.T.As.) Later on, the Government Order No. 3129 / Chikitsha Anubhag / 5-11-95-9 (187) / 94 dated 12th September 1995, was issued by the Government of U.P., whereby the pay scale of O.T.As. was revised from Rs. 330 - 495 to Rs. 750 – 940. Meanwhile, it appears that the O.T.As. filed a ***Writ Petition No. 1241 (S/S) of 1995; Manohar Lal and others Vs. State of U.P. and others,*** which was disposed of vide order dated 19.07.1995. In pursuance of the said order of the Allahabad High Court, the representation made by petitioners of that case, was disposed of by the Government of U.P., vide order dated 28.09.1995 (copy Annexure -8 to the writ petition) whereby the representation of revise the pay scale to Rs. 950 – 1500 was rejected on the ground that vide aforesaid

Government Order dated 12.09.1995, the pay scale has already been revised to Rs. 750 940. Aggrieved by the two Government Orders, Annexure -8 and Annexure -13 to the writ petition, this writ petition has been filed before the Allahabad High Court, on the ground that the petitioners have been discriminated arbitrarily and the impugned orders are passed by the Government in violation of Article 14 and Article 16 of the Constitution of India. Subsequently, on creation of State of Uttaranchal, this writ petition has been transferred to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

4) A counter affidavit is filed on behalf of the respondents in which it is not denied that the petitioners were promoted from the post of Ward Boy to the post of Operation Theatre Attendants, in the pay scale of Rs. 330-495. It is also not denied by the respondents that initially the Pay Commission's report, which came in the year 1999, the pay scale of O.T.As. was not revised unlike others w.e.f. 01.01.1986, but they were being given time scale in view of the length of their service and were already getting pay scale of Rs. 775 – 1025. However, vide Government Order dated 12.09.1995 (copy Annexure -13 to the writ petition) pay scale of O.T.As. was revised to Rs. 750 -940. Defending said revision, it has been stated that the post of O.T.As. belong to Group 'D' category, and not to Group 'C' category. Regarding claim of petitioners to pay scale of Rs. 950 – 1500, it is stated that said pay scale is of Group 'C' (Class III), and not of Group 'D'. Lastly, it is stated that petitioners were never given pay scale of Rs. 330 – 495.

5) Before further discussions, it is pertinent of mention here that the stand taken by the respondents that the petitioners were not given pay scale of Rs. 330 – 495, on the face of if, doesn't appear to be true. Annexure -1 and Annexure -2 to the writ petition, which are copies of the orders whereby the petitioners were promoted from the post of Ward Boy to the post of O.T.As., clearly show that the petitioners were given pay scale of Rs. 330 – 495.

6) The ground on which the respondents have challenged the claim of the petitioners to the pay scale of Rs. 950 – 1500, is that the post of O.T.A. is a Class IV post (Group 'D') and not of the Class III (Group 'C'). However, this defence taken by the respondents again is without force. This Court in ***Writ Petition No. 3109 (S/S) of 2001; Hukam Singh Negi Vs. State of U.P. and others,*** which was decided on 21.09.2004, on a similar controversy, has categorically held that the post of O.T.A. being equivalent to the Medical Attendant and Untrained Pharmacists was a Class III post (Group 'C') as all the three posts were in the pay scale of Rs. 330 – 495. In the said referred case, it was also held that the requisite qualification for the post of O.T.A. was higher than of the Medical Attendant and Untrained Pharmacists. The pay revision of the posts of Medical Attendant and Untrained Pharmacist made in the year 1989 by the Pay Commission, which was made applicable w.e.f. 01.01.1986, itself shows that the Medical Attendants and Untrained Pharmacists were given revised pay scale in category Class III (Group 'C'). When the un-revised pay scale of O.T.As. was equivalent to that of the Untrained pharmacists and that of Medical Attendants, there was no justification to classify O.T.A. in Class IV category, particularly, when no pay scale was

specifically given to them in the report of the Pay Commission. In writ Petition No. 3109 (S/S) of 2001; Hukam Singh Negi Vs. State of U.P. and others, decided on 21.09.2004, this Court has already issued a mandamus directing the State of Uttaranchal to decide the representation dated 01.12.1997 made by the petitioner in said case, who was also an O.T.A., relating to the claim of revised pay scale. Learned counsel for the parties conceded that the controversy in this writ petition is squarely covered by the judgment and order, referred in Hukam Singh Negi case.

7) In the circumstances, the writ petition is allowed in terms of the judgment and order dated 21st September 2004, passed in Writ Petition No. 3109 (S/S) of 2001; Hukam Singh Negi Vs. State of U.P. and others, with the observation that the present petitioners may make a representation within a period of fifteen days from today, which shall be disposed of by the respondent No. 1/ concerned authority, within a period of three months from the date certified copy of this Order along with representation is produced by the petitioners. Consequently, the impugned Order dated 28.09.1995 (Annexure -8 to this writ petition) and Government Order dated 12.09.1995 (Annexure -13 to this writ petition) are hereby quashed. (All pending applications in this Petition also stand disposed of).

(Prafulla C. Pant, J.)

Dt. : December 07, 2006
H.Negi